

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC

Plaintiffs,

v.

INTERNET ARCHIVE and DOES 1 through
5, inclusive

Defendants.

Case No. 1:20-CV-04160-JGK

DECLARATION OF BENJAMIN H. SARACCO

CONFIDENTIAL

I, Benjamin H. Saracco, declare as follows:

1. I am a Research & Digital Services Librarian at a hospital library affiliated with a medical school in New Jersey.

2. I have been a professional librarian since around June 2009. I have a bachelor's degree in Biology from Stockton University. I hold a Master of Library Science from Queens University and a Master of Arts in Instructional Technology degree from Stockton University. From my education and more than a decade of experience as a professional librarian, including at numerous public libraries, I consider the Internet Archive to be a library.

3. I first learned about the Internet Archive while obtaining my Master of Library Science over a decade ago. In that program, students and instructors commonly used and discussed the Internet Archive as a reputable resource for materials online. For instance, at least one of my class syllabuses referred to the Internet Archive as an available reference tool. As a student, I also used the Internet Archive's website to publicly host my thesis project presenting an online digital library of baking cookbooks.

4. From around June 2009 to May 2012, I worked for the New York Botanical Garden in a Digital Projects Librarian position partially funded by the Institute of Museum and Library Services (IMLS). In that position, I worked in partnership with the Internet Archive to digitize rare books for the botanical garden. I also advised the library on digitization hardware, software, and metadata digital preservation practices, and I served as an administrator for the library's interlibrary loan program.

5. From around May 2012 to March 2015, I worked for the Atlantic City Free Public Library as a Digital & Information Services Librarian and managed all electronic resources, including our eBook collections.

6. From around April 2015 to June 2017, I worked for the New Jersey State Library & Thomas Edison State University as a New Jersey Reference & Electronic Resources Librarian. The Internet Archive was a resource I relied on to perform my job responsibilities at the state library. For instance, I used the Internet Archive to pilot a service that automatically crawled certain state government websites and contributed to and administered an online repository of New Jersey state government documents, pursuant to NJ Rev State § 52:14-25.1 (2013).

7. In my current role, the academic medical and hospital library I work in serves doctors, nurses, residents, and other healthcare workers in the associated hospital, and also the students, faculty, and staff of the associated medical school. For medical students, the medical school provides all required materials in an ebook format. Our library thus primarily stocks only physical books that we do not make available in the ebook format.

8. The start of the COVID-19 pandemic was an extremely stressful time for me and my colleagues at the hospital library. In March 2020, the Governor of New Jersey Phil Murphy signed an executive order that closed all academic libraries. I remember being flooded with requests from medical students, nurses, and doctors for information during that time, particularly information about COVID and COVID patient care to address the high rates of hospitalization in the state. I personally reached out to the New Jersey Secretary of State's office to inquire if the executive order applied to academic hospital libraries, but was told that even under such dire circumstances, the executive order also applied to hospital libraries like ours. Therefore, we closed down our book lending services, and all physical books in our library were no longer available to medical students, nurses, and doctors.

9. Some of the most commonly checked out physical materials in our library are training materials for patient care. After we closed the library pursuant to the executive order, I

received multiple requests for at least two such materials: the Student Manual for Basic Life Support (BLS) for Healthcare Providers and the Advanced Cardiovascular Life Support Provider Manual. The Student Manual for Basic Life Support (BLS) for Healthcare Providers is a manual published by the American Heart Association that is used to train medical students to handle life-threatening emergencies, for example by giving CPR or using an automated external defibrillator (AED) in cases of cardiac arrest. The Advanced Cardiovascular Life Support Provider Manual, also published by the American Heart Association, builds on the BLS manual but teaches more advanced skills to treat patients in life-threatening circumstances. I searched for ebook versions of these materials in our database and did not find any. Believing I had no other quick options, I directed people to the materials on the Internet Archive, available at <https://archive.org/details/blsforhealthcar000amer> and https://archive.org/details/advancedcardiova0000unse_m9r8, respectively. I understood at the time that the versions on the Internet Archive were older than the versions we had in physical circulation. As a librarian I cannot know with certainty what our materials are ultimately used for in the hospital, but at the time, I was under the impression that the healthcare workers that were requesting these materials might be using them to treat COVID-19 patients admitted to our affiliated hospital.

10. Around the same time, my colleagues and I brainstormed solutions to make our physical books available. We rushed to set up a scheduled book pick up service so that students, nurses, and doctors could still access the physical books in our collection. Through the webpage, users could sign up to pick up books by appointment. Each book was sanitized before lending and quarantined and disinfected upon return. It took approximately 2-4 weeks to set up the webpage and the processes to lend out our books. Without the Internet Archive, the Student

Manual for Basic Life Support (BLS) for Healthcare Providers and the Advanced Cardiovascular Life Support Provider Manual would not have been available through our library at all until the book pick up service became available. Even when the book pick up service began, the rate of people borrowing books through that service was much slower than our usual rate of borrowing in the library. I believe that may have been due to public perception at the time that surface contamination of COVID created a high risk of infection.

11. Also around the Spring of 2020, I received a request from a faculty member in the medical school's human cadaver gross anatomy laboratory for certain materials. Because the school had shut down to students, the laboratory had to shift to remote learning. I provided a demonstration over Zoom of how to use the Internet Archive's lending library to search for materials that might be useful for the curriculum.

12. Before and during the pandemic, on multiple occasions, I have also directed students in the medical school's Scholars' Workshop to the Internet Archive. I understand that workshop includes a capstone project for students in their fourth year that will sometimes require a student to perform historical medical research for their projects. I have directed multiple students in that workshop to the Internet Archive's lending library to aid their research efforts. Without the Internet Archive in those circumstances, I would have directed the students to public libraries or other resources available in our catalogues.

13. From my education and professional experiences as a librarian, especially during the start of the COVID-19 pandemic, I know the Internet Archive is an extremely valuable resource for the public. I have immense respect for the important work they are doing to ensure access to information through a digital medium.

14. As a professional librarian of over 12 years, I have been trained to and have always respected the rights of authors and publishers. In my view, the Internet Archive's lending library is consistent with those rights.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 5/10/2022 in Camden, New Jersey.

DocuSigned by:

Benjamin Saracco

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BENJAMIN H. SARACCO

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2022 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Joseph C. Gratz
JOSEPH C. GRATZ